

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

UNITED RENTALS, INC.

and

CASE NO. 8-RC-16598

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 66, 66A, B, C, D, O, & R, AFL-CIO**

REPORT ON OBJECTIONS

Pursuant to a Petition filed on February 11, 2004 and a Stipulated Election Agreement approved by me on February 27, 2004, an election by secret ballot was conducted on March 26, 2004, among the employees in the following unit:

All truck drivers, tractor trailer drivers, mechanics, parts associates, and customer service associates, employed by the Employer at its 44691 State Route 14, Columbiana, Ohio and 16695 Lisbon Street, East Liverpool, Ohio locations but excluding all office clerical employees, outside sales/rental persons, professional employees, guards and supervisors as defined in the Act.

The Tally of Ballots prepared on March 26, 2004, shows that of approximately 15 eligible voters, 15 cast ballots, of which 8 were cast for, 7 against, the Petitioner. There were no challenged ballots.

On April 1, 2004, the Employer filed timely objections to conduct affecting the results of the election serving a copy on the Petitioner. A copy of the Employer's Objections is attached and incorporated¹.

Pursuant to the provisions of Section 102.59, of the Board's Rules and Regulations, an administrative investigation of the objections has been conducted. I conclude that the objections discussed below lack merit and I shall recommend that they be overruled.

¹ The Petition was filed on February 11, 2004. I have considered only that conduct which occurred during the critical period, which began on, and includes, the date of filing of the Petition and extends through the election. **The Ideal Electric and Manufacturing Company**, 134 NLRB 1275 (1961).

OBJECTIONS

The Employer's Objections are listed below:

1. The atmosphere of the election was tainted and laboratory conditions destroyed when Bob Williams, an avowed union supporter and agent of the Union, threatened, intimidated, and attempted to coerce employees prior to the election.
2. Prior to the election, Williams told one employee to "watch himself" and that he "knows what kind of guy I am." The employee perceived this statement as a threat of bodily harm.
3. Prior to the election, Williams asked several employees whether they "go straight home after work." At least one of the employees perceived this statement as a threat of bodily harm.
4. Prior to the election, Williams spoke with an employee whose wife is a union member and employee in a local school district. Williams asked that employee what would happen to his wife's job when the school found out about his anti-union position. Williams also told that employee that after the election, the Union would file a grievance and have him replaced by an employee with more seniority. The employee perceived these statements as threats of economic harm to him and his family.
5. Prior to and after the election, Williams verbally and physically intimidated another employee based solely on that employee's views regarding the Union. These actions and statements constitute verbal and physical intimidation, and the employee perceived such actions and statements as a threat of bodily harm.
6. The Board's process was subverted by this conduct, and the ability to exercise a free and reasoned choice in the election has been interfered with.
7. Accordingly, United Rentals respectfully requests that the Board sets aside the election, as it did not constitute the free and fair choice of the voting employees.

ANALYSIS

The Employer Submitted Insufficient and Untimely Evidence

On April 2, 2004, I sent the Employer's counsel the attached letter which is the customary practice of the Region. The letter both acknowledges the receipt of objections and underscores the burden on an objecting party to submit timely and sufficient evidence in support of its objections. The letter specifically states that a list of witnesses alone will not suffice. Further, if the evidence cannot be submitted in written form but is to be presented through witnesses, "...the names, addresses, telephone numbers and a brief written statement as to the

evidence each witness will be able to furnish must (emphasis supplied) be timely submitted.”² Finally, the letter warns that: “Your failure to timely submit the evidence will result in your objections being overruled without further investigation.”

Notwithstanding the foregoing explicit instructions, the Employer’s attorney submitted a Statement in Support of Objections, received on April 7, 2004 that listed the names of 5 witnesses in support of the objections. The statement, however, contained only a brief summary of the witnesses’ purported testimony and failed to provide any addresses or telephone numbers.

The Employer submitted a supplemental position statement, which was received April 22, 2004. In this submission, the Employer provided copies of 4 witness statements. The Employer also provided the telephone number of one witness.

On April 14, 2004, the Union submitted a timely response to the Employer’s Objections. The Union denies that Williams was ever an agent or employee of the Union. Moreover, the Union asserts that it never instructed or advised Williams to take any of the actions alleged by the Employer. The Union also argues that Williams never threatened, intimidated or coerced any employees prior to the election.

Having duly considered the matter, I conclude that the Employer failed to present evidence sufficient to establish a prima facie case in support of its Objections. Moreover, the evidence was not submitted in a timely manner. Under these circumstances, further investigation is unnecessary. The Employer’s Objections do not raise substantial or material issues of either fact or law with respect to the election. In making this decision I have not relied on the evidence submitted by the Employer on April 22, 2004. That evidence was not received until 20 days after the filing of the objections. Clearly, the Employer’s submission of evidence does not comply with the provisions of the Rules and Regulations, Section 102.69(a), nor does it comply with the clear language of my April 2, 2004 letter.

The Board cannot delay final election results by conducting post-election investigations whenever a party files objections unsupported by even minimal evidence. To allow a party to ignore the simple requirements of 102.69(a) would unduly delay the resolution of questions concerning representation, a core purpose of the National Labor Relations Act. Thus, it is reasonable to require the objecting party to substantiate its allegations in a timely fashion. The Employer has failed to do that in the instant case.

As my April 2, 2004 letter informed the Employer, the requirement to submit supporting evidence within seven (7) days of filing its objections “does not impose an onerous burden on you as it is reasonable to assume that you are already in possession of such evidence and relied upon it to file your objections.” Accordingly, I find that the Employer did not meet its burden to timely submit prima facie evidence demonstrating that the election should be set aside.

² This letter clearly states the manner in which objecting parties are to comply with Section 102.69(a) of the Board’s Rules and Regulations.

Finally, even assuming, arguendo, the truth of the summary by the Employer submitted on April 7, 2004, there is no prima facie evidence of objectionable conduct. The Employer asserts that Robert Williams, who made the allegedly threatening, coercive and intimidating comments, is an agent of the Union. It offers no evidence, factual information, or legal argument in support of that proposition. On the contrary, the Employer stipulated in the Agreement on Voting Eligibility approved by me on February 27, 2004 that Williams was an eligible voter in the election.

In support of Objection 2, the Employer asserts that Williams, an “avowed supporter and agent of the Union” falsely accused an employee of talking about Williams behind his back. Williams then told the employee to “watch himself” and that he “knows what kind of guy I am.”

In support of Objection 3, the Employer argues that Williams asked several employees whether they “go straight home after work.” According to the Employer, an employee perceived this statement as a threat of bodily harm if he did not vote for the Union.

In support of Objection 4, the Employer asserts that Williams asked an employee what would happen to his wife’s job when the school found out about his anti-union position. That employee’s wife is a union member and employee in a local school district. Williams also told this employee that after the election, the Union would file a grievance and have an employee with more seniority “take his f*cking job.”

In support of Objection 5, the Employer contends that Williams verbally and physically intimidated an employee based solely on this employee’s views regarding the Union. On or about March 17, 2004, the employee sent a letter to the Union stating his disapproval of the Union. The Employer asserts that Williams knew about the letter and accused the employee of lying in the letter. On or about March 31, 2004, the Employer contends that Williams walked up to the employee and strongly patted him on the back. The Employer characterizes this pat as “unfriendly.” Williams continued to “pat” the employee on the back and increased the intensity each time. The Employer also contends that employees complained to Store Manager Chris Britt about Williams’ conduct, and that Britt disciplined Williams for unwelcome physical contact with another employee.

The Board has held, with court approval, that the evidence must establish that an employee’s statements and conduct were known to, authorized, or, at least, subsequently condoned by a union before agency status can be imputed to the individual. Absent such evidence, the conduct of employees is considered under the third party standard. Under this standard, conduct by employees must be so egregious as to create a general atmosphere of fear and coercion before the election will be set aside. **Cal-West Periodicals, Inc.**, 330 NLRB 599 (2000); **Westwood Horizons Hotel**, 270 NLRB 802 (1984).

With regard to the alleged threats made by Williams to his co-workers, the statement submitted by the Employer in support of its objections failed to disclose any evidence showing that Williams was acting as an agent of Petitioner. When viewed under the third party conduct standard, the conduct attributed to Williams is isolated and vague. It certainly cannot be construed as establishing an overall atmosphere of fear and coercion sufficient to set the election aside. Accordingly, I shall recommend that the Employer’s Objections be overruled.

CONCLUSIONS AND RECOMMENDATION

I conclude that none of the Employer's Objections raise substantial and material issues of fact or law with respect to the election in this matter. Therefore, I recommend that they be overruled. I further recommend that a Certification of Representative be issued in favor of the International Union of Operating Engineers, Local 66, 66A, B, C, D, O & R, AFL-CIO.

Dated at Cleveland, Ohio this 5th day of May, 2004³.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

attachments

³ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, D.C. 20570. Exceptions must be received by the Board in Washington by May 19th, 2004. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and/or challenges and which are not included in this Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon the evidence in any subsequent related unfair labor practice proceeding.